

August 25, 2000

Title VI Guidance Comments
Director, Office of Civil Rights (1201A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

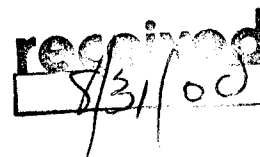
Dear Ms. Goode:

SUBJECT: ASTSWMO Docket Comments on EPA's Revised/Draft Title VI
Guidances, as outlined in the *Federal Register* of June 27, 2000,
(65 FR 39650).

The purpose of this letter is to provide brief comments regarding the referenced draft EPA guidances for both recipients and federal investigators regarding allegations of CRA Title VI disparate effects related to environmental permitting programs. First, it is appropriate to recognize that the State Environmental Commissioners, organized within their association known as the Environmental Council of the States, have invested countless hours in study and consultation in conjunction with EPA and other stakeholders to help shape the current draft guidances. We are aware of their recent commentary on the guidances, and recognize that as the most extensive and comprehensive review of the guidances by State reviewers. Our comments are entirely consistent with their views, and should be considered by the Agency as supplemental to that more comprehensive review.

ASTSWMO was one of many critical commenters to the 1998 Interim Title VI Guidance, and we commend EPA for its efforts to incorporate many of the earlier criticisms in developing the current guidances. We asked for more detail, definition, clarity, and linkage with EPA's own rules regarding the subject. These revised documents show evidence of considerable effort to apply those criticisms, and result in much more understandable and structured documents. We remain somewhat unconvinced that the degree of clarity is what is necessary to allow optimum interaction among various levels of government in seeking solutions to allegations of disparate effects, but we believe EPA has moved the process forward, and future revisions may yet capture that level of efficient interaction. There are a number of problem areas which require resolution as soon as possible:

- The low threshold of specificity for an acceptable complaint alleging discriminatory effects remains disproportionate to the resources government agencies at all levels, from EPA to States to local governments, will invest in determination and resolution of the allegation. We understand EPA's legal and

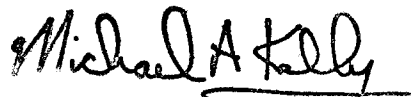


moral obligations to investigate any allegation, especially those of groups or individuals without resources to conduct elaborate analyses and health studies. However, we think that more effort should be made to identify incremental approaches which will rather quickly allow identification of serious situations requiring such extensive analyses, and those more indeterminate and less threatening requiring less complex solutions. There appears to be only one basic investigatory path outlined in the current guidances.

- Despite the Agency's efforts to develop the methods for determining impact and demographic analysis, the resultant descriptions in both guidances only underscore the weaknesses of our current tools in determining cumulative impact and practical ways to assess relief among permitted and non-permitted activities. One is struck by the scope of the task that EPA is building for its own investigators and other levels of government, especially in light of the limited scientific tools presently available. Again, we are concerned with the demands this places on our limited resources and suggest the Agency continue to explore more incremental approaches to accepting complaints and conducting investigations. We should not raise expectations beyond our capabilities.
- Finally, there is one area of concern which we noted in the 1998 Interim Guidance that does not appear to have been resolved or adequately clarified. We continue to be uncertain of EPA's expectations of a State waste permitting program vis-a-vis the program's authority or jurisdiction, or lack thereof, over other permitted or non-permitted activities, especially in dealing with cumulative risk scenarios. The discussion of Investigative Procedures in the Draft Revised EPA Internal Guidance document, and the brief encouragement for intergovernmental involvement in the Draft Recipients Guidance do not resolve this uncertainty for us. We ask EPA to continue to work to bring clarity to this fundamental question of responsibility and accountability of permitting programs and agencies. We want to understand just what the Agency expects from us, and if those expectations are beyond our program jurisdiction, just how EPA believes we are to resolve the matter.

We thank you for the opportunity to comment on these important documents, and for the Agency's obvious efforts in outreach and inclusiveness in the continuing refinement of these guidances. Again, please consider our brief comments as complementary to the extensive analysis of the State Environmental Commissioners, who have already provided the Agency definitive State commentary.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Kelly". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael A. Kelly
President, ASTSWMO